

1 THOMAS R. Burke (CA State Bar No. 141930)

[thomasburke@dwt.com](mailto:thomasburke@dwt.com)

2 DAVIS WRIGHT TREMAINE LLP

505 Montgomery Street, Suite 800

3 San Francisco, California 94111-6533

Telephone: (415) 276-6500

4 Facsimile: (415) 276-6599

5 JONATHAN R. DONNELLAN

[jdonnellan@hearst.com](mailto:jdonnellan@hearst.com) (*pro hac vice*)

6 DIEGO IBARGUEN

[dibarguen@hearst.com](mailto:dibarguen@hearst.com) (*pro hac vice*)

7 HEARST CORPORATION

300 W. 57th Street, 40th Floor

8 New York, New York 10019

Telephone: (212) 841-7000

9 Facsimile: (212) 554-7000

10 Attorneys for Defendant

HEARST COMMUNICATIONS, INC.

12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA**

14 SHAHID BUTTAR FOR CONGRESS  
15 COMMITTEE, et al.,

16 Plaintiffs,

17 vs.

18 HEARST COMMUNICATIONS, INC.,

19 Defendant.

Case No. 3:21-cv-05566-EMC

**SUPPLEMENTAL DECLARATION OF  
DIEGO IBARGUEN IN SUPPORT OF  
DEFENDANT HEARST  
COMMUNICATIONS, INC.'S MOTION FOR  
ATTORNEYS' FEES AND COSTS**

[Cal. Civ. Proc. Code § 425.16]

Judge: Hon. Edward M. Chen

Date: April 6, 2023

Time: 1:30 p.m.

Place: Courtroom 5, 17<sup>th</sup> Floor

23 **DECLARATION OF DIEGO IBARGUEN**

24 I, DIEGO IBARGUEN, declare:

25 1. I am an attorney duly admitted to practice law in the State of New York, and I  
26 have been admitted to practice before this Court *pro hac vice* in connection with this matter. I  
27 am employed as Senior Counsel in the Office of General Counsel for The Hearst Corporation

1 ("Hearst"), and I represent defendant Hearst Communications, Inc. ("Hearst" or "Defendant") in  
 2 this matter. I make this Supplemental Declaration in further support of Defendant's Motion for  
 3 Attorneys' Fees and Costs. The matters stated herein are true of my own personal knowledge,  
 4 except for those matters expressly stated on information and belief, which matters I believe to be  
 5 true.

6       2. Attached as Exhibit A is an updated time record setting forth the time spent by  
 7 Hearst's in-house counsel in connection with this litigation for which Hearst seeks an award of  
 8 attorneys' fees. Exhibit A supersedes what was previously filed with this Court as Exhibit A to  
 9 the March 2, 2023 Declaration of Diego Ibarguen.

10      3. As reflected in Exhibit A, Hearst has limited its request for in-house attorneys'  
 11 fees only to time spent on this matter by me; Hearst does not seek to recover fees for the time my  
 12 in-house colleagues have spent on this matter, including Hearst's Co-General Counsel Jonathan  
 13 R. Donnellan, Hearst's Deputy General Counsel Ravi V. Sitwala and Hearst OGC's senior  
 14 paralegal.

15      4. I prepared Exhibit A from task and time annotations I maintain in the ordinary  
 16 course of my professional practice in daily task notebooks and which I have maintained over the  
 17 course of this litigation; I have also reviewed electronic records including e-mail archives, word  
 18 processing files, and Hearst OGC's digital record keeping system, to estimate my actual time  
 19 spent on tasks performed in this matter. In the course of preparing Exhibit A, I have  
 20 significantly reduced or completely written off much of the time spent on this matter in order to  
 21 arrive at what I believe to be a reasonable and appropriate reflection of the substantial work I  
 22 performed on this matter. For example, where the time I actually spent appeared unnecessary or  
 23 duplicative of other work done on this case, or where the time actually spent appeared to exceed  
 24 reasonably necessary amounts of time for the particular tasks performed, I have reduced such  
 25 time entries downward or written them off completely.

26      5. The following chart summarizes the hours of legal work, with an associated  
 27 billing rate, performed by me during the course of this litigation, as described in Exhibit A:

1. Legal and Factual Research, Preparation of Motions to Dismiss and Accompanying Declarations and Filings.

<b>Name</b>	<b>Hourly Rate</b>	<b>Hours Expended</b>	<b>Amount</b>
D. Ibarguen	\$600	46.2	\$27,720

2. Review of Plaintiffs' Opposing Papers, Legal Research, Preparation of Replies and Supporting Declarations and Additional Reply Papers.

Name	Hourly Rate	Hours Expended	Amount
D. Ibarguen	\$600	31.0	\$18,600

### 3. Preparation for and Appearance at Hearings on both Motions to Dismiss.

Name	Hourly Rate	Hours Expended	Amount
D. Ibarguen	\$600	14.0	\$8,400

4. Preparation of Motion for Fees and Costs, Review of Plaintiff's Opposing Brief, Legal Research, Preparation of Reply and Supporting Declaration.

Name	Hourly Rate	Hours Expended	Amount
D. Ibarguen	\$600	20.1	\$12,060

6. The hourly rate noted above charged by Hearst OGC is consistent with what I understand to be customary market rates charged with comparably experienced litigation counsel in matters featuring complexities similar to this matter. Hearst OGC is familiar with the prevailing rates for First Amendment Counsel in the State of California through interviewing and retaining counsel in connection with various Hearst matters in California. As noted in the March 2, 2023 Declaration of Diego Ibarguen, Hearst's outside counsel in this matter billed Hearst at an hourly rate of \$643.

I declare, under penalty of perjury under California law and the laws of the United States, that the foregoing is true and correct.

Executed in New York, New York, on March 22, 2023.

s/ Diego Ibarguen

Diego Ibarguen

# **Exhibit A**

**Diego Ibarguen Attorney Time Records***Shahid Buttar for Congress Committee, et al., v. Hearst Communications, Inc.,*

Case No. 21-cv-05566-EMC

Date	Hours	Description
07/22/21	3	Review and analyze unserved Complaint which was forwarded by client after learning of filing; review client's underlying articles at issue in Complaint; confer with client re: same; discussing complaint and initial strategy issues with J. Donnellan by telephone; emails w/ local counsel (T. Burke).
07/23/21	1.5	Preparation of preservation directive for client; phone calls w/ client re: background on allegations in Complaint.
07/24/21	2	Discussion with J. Donnellan re: legal standards and possible defenses available, discussion of possible anti-SLAPP motion; research re: same.
08/04/21	0.4	Teleconference with local counsel (T. Burke) re: unserved Complaint, strategy and available defenses including anti-SLAPP motion, failure to sufficiently plead actual malice, failure to demand correction.
10/12/21	0.2	Review of complaint service copy served on Hearst Communications through its corporate agent; emails w/ local counsel re: same.
10/13/21	0.1	Emails with client alerting them of service of Complaint.
10/26/21	1	Research on anti-SLAPP standards, substantial truth, actual malice, correction statute, associational standing for campaign; emails re: same with J. Donnellan; email with client confirming Plaintiffs failed to make correction demand.
10/27/21	1.5	Research and review of materials on correction statute requirements; drafting anti-SLAPP motion; call w/ local counsel (T. Burke) re: strategy issues and legal defenses for anti-SLAPP motion and agreement to seek extension of time from Plaintiffs to file anti-SLAPP motion.
11/17/21	1	Drafting pro hac vice papers
11/21/21	1	Drafting anti-SLAPP motion
11/22/21	1	Drafting anti-SLAPP motion
11/26/21	2	Drafting anti-SLAPP motion
11/27/21	4	Drafting anti-SLAPP motion
11/28/21	4	Drafting anti-SLAPP motion; emails w/ J. Donnellan and local counsel seeking comments re: draft.
11/29/21	2	Revisions to anti-SLAPP motion based on comments from J. Donnellan and T. Burke; preparation of accompanying declaration.
11/30/21	1	Revisions to anti-SLAPP papers based on additional comments from R. Sitwala.
12/01/21	2	Revisions to anti-SLAPP papers
12/02/21	2	Finalizing anti-SLAPP papers.
01/26/22	1	Review and analyze opposition papers
02/01/22	2	Discussion with T. Burke of opposition to anti-SLAPP motion, arguments for reply related to burdens of showing falsity, actual malice, compliance with corrections statute, possible inclusion of purported "correction demand" relied on but not included by Plaintiffs; research re same.
02/14/22	3	Draft reply brief
02/15/22	3	Draft reply brief
02/16/22	1.5	Revise reply brief; communications with T. Burke re: same.
02/17/22	2	Revise reply brief
02/18/22	1.5	Revising draft reply brief based on comments from J. Donnellan, R. Sitwala and T. Burke.
02/21/22	2	Revise draft reply brief; prepare accompanying declaration

Date	Hours	Description
02/21/22	2	Finalizing reply brief and accompanying filings.
03/10/22	2	Preparation for oral argument on anti-SLAPP motion
03/11/22	3	Preparation for oral argument on anti-SLAPP motion; moot with J. Donnellan, R. Sitwala, T. Burke
03/15/22	2	Preparation for oral argument on anti-SLAPP motion, second moot argument with J. Donnellan, R. Sitwala.
03/17/22	1.5	Preparation for argument and oral argument before Judge Chen on anti-SLAPP motion.
04/25/22	0.5	Review of Judge Chen's Order dismissing Complaint; discussion of same with T. Burke, J. Donnellan and client
08/18/22	1	Review of Plaintiffs' First Amended Complaint
09/20/22	2.5	Reviewing Plaintiffs' FAC, drafting anti-SLAPP motion
09/21/22	7.5	Drafting anti-SLAPP motion (FAC) and accompanying declaration and other papers
09/22/22	4	Revising anti-SLAPP motion (FAC) based on comments from R. Sitwala, T. Burke and accompanying declaration and other papers
09/23/22	2	Finalizing anti-SLAPP motion (FAC) and accompanying filings
10/22/22	0.5	Review of Plaintiffs' opposition to anti-SLAPP motion (FAC).
10/27/22	0.5	Review of amicus filed by Rutgers Center for Security, Race and Religion.
11/06/22	2	Draft reply brief (FAC).
11/08/22	3	Draft reply brief (FAC).
11/09/22	2	Draft reply brief (FAC).
11/10/22	1	Draft reply brief (FAC).
11/12/22	1	Revision of Reply brief (FAC) incorporating comments from R. Sitwala, T. Burke.
11/14/22	2	Finalizing reply brief (FAC) and accompanying decalartion and other filings.
01/30/23	2	Preparing for oral argument on anti-SLAPP motion (FAC).
02/01/23	2	Preparing for oral argument on anti-SLAPP motion (FAC).
02/02/23	1.5	Preparing for oral argument and oral argument before Judge Chen on anti-SLAPP motion (FAC).
02/16/23	0.5	Review of Judge Chen's Order dismissing FAC.
02/17/23	0.1	Communication with client re: dismissal of FAC; discussion of fees award.
02/26/23	3	Drafting fees motion and accompanying declarations.
02/27/23	4	Drafting fees motion and accompanying declarations
02/28/23	1	Revisions to draft fees motion brief based on input from T. Burke and R. Sitwala.
03/02/23	1	Finalizing fees motion papers.
03/17/23	0.5	Review Opposition brief; review of cases cited therein.
03/19/23	2	Legal Research on <i>Brown v. Electronic Arts</i> , availability of fees on amended complaint following consideration of merits of initial anti-SLAPP motion
03/20/23	3.5	Additional legal research on standards applicable to fee applications under anti-SLAPP in federal court; drafting Reply brief on fees motion.
03/21/23	3	Drafting Reply brief, and revisions to same based on input from T. Burke and R. Sitwala.
03/22/23	1.5	Preparation of Reply Declaration; finalization of Reply papers.

**TOTAL 111.3 hours @ \$600/per hour = \$66,780**

**TOTAL FEES = \$66,780**